

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DOMESTIC CONSTRUCTION, LLC,

Plaintiff,

v.

BANK OF AMERICA, N.A.

Defendant/Third-Party
Plaintiff,

v.

IDEAL SERVICES, INC.,

Third-Party Defendant/
Fourth-Party Plaintiff,

v.

KERMIT MILLS and JANE DOE
MILLS, and the marital community
comprised thereof,

Fourth-Party Defendants.

CASE NO. C07-5357BHS

ORDER DENYING
DEFENDANT KERMIT
MILLS' MOTION TO
DISMISS FOR LACK OF
PERSONAL JURISDICTION
AND GRANTING IDEAL
SERVICES, INC.'S MOTION
FOR LEAVE TO AMEND

This matter comes before the Court on Fourth-Party Defendant Kermit Mills' Motion to Dismiss for Lack of Personal Jurisdiction (Dkt. 70), Third-Party Defendant/ Fourth-Party Plaintiff Ideal Services, Inc.'s Motion to Strike (Dkt. 77), and Third-Party Defendant/Fourth-Party Plaintiff Ideal Services, Inc.'s Motion for Leave to Amend

1 Fourth-Party Complaint Against Kermit Mills (Dkt. 79). The Court has considered the
2 pleadings filed in support of and in opposition to the motion to dismiss and the remainder
3 of the file and hereby denies Kermit Mills' motion for the reasons stated herein. The
4 Court further grants Ideal Services, Inc.'s motion to amend as no opposition has been
5 filed to the motion, good cause has been shown, and no undue prejudice to the other
6 parties will result.

7 **MOTION TO STRIKE**

8 While the Court is cognizant of the arguments presented by Ideal Services, Inc.
9 regarding the statements it attempts to strike, the Court is able to weigh the assertions
10 submitted by Kermit Mills appropriately and therefore the motion to strike should be
11 denied.

12 **MOTION TO DISMISS**

13 It is Plaintiff's burden to establish a prima facie case of personal jurisdiction by
14 alleging facts that, if true, would support jurisdiction. *Bancroft & Masters, Inv. v.*
15 *Augusta Nat'l Inc.*, 223 F.3d 1082, 1085 (9th Cir. 2000). When a district court rules on a
16 motion to dismiss for lack of personal jurisdiction without holding an evidentiary hearing,
17 the plaintiff need only make a prima facie showing of the jurisdictional facts to withstand
18 the motion. *Doe v. Unocal Corp.*, 248 F.3d 915, 922 (9th Cir. 2001). In order to make a
19 prima facie showing, Plaintiff must allege facts which, if true, would be sufficient to
20 establish personal jurisdiction. *Id.* If not directly controverted, Plaintiff's version of the
21 facts is taken as true for purposes of the motion. *Id.* Conflicts between the facts stated in
22 the parties' affidavits must be resolved in Plaintiff's favor during a prima facie
23 jurisdictional analysis. *Dole Food Co., Inc. v. Watts*, 303 F.3d 1104, 1108 (9th Cir. 2002).

24 Where jurisdiction is not controlled by a federal question, the district court applies
25 the law of the state in which the district court sits to determine whether the plaintiff has
26 met its burden. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 9th Cir.
27 2004). In Washington, the long-arm statute is co-extensive with the outer limits of due
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1 process. *Cognigen Networks, Inc. v. Cognigen Corp.*, 174 F. Supp. 2d 1134, 1137 (W.D.
2 Wash. 2001).

3 In order to satisfy the Constitutional requirements of due process, Defendant must
4 have at least minimum contacts with the relevant forum state such that the exercise of
5 jurisdiction does not offend traditional notions of fair play and substantial justice.
6 *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). The law generally
7 recognizes two varieties of personal jurisdiction: general and specific. *Amazon.Com, Inc.*
8 *v. Kalaydjian*, 2001 WL 491752 *2 (W.D. Wash. 2001) (citing *Panavision Int'l, L.P. v.*
9 *Toeppen*, 141 F.3d 1316, 1320 (9th Cir. 1998)).

10 **1. General Jurisdiction**

11 For general jurisdiction to exist over a nonresident defendant, that defendant must
12 engage in continuous and systematic general business contacts that approximate physical
13 presence in the forum state. *Schwarzenegger*, 37 F.3d at 801. Factors to be taken into
14 consideration when determining whether a defendant is subject to general jurisdiction are
15 whether defendant makes sales, solicits or engages in business in the state, serves the
16 state's markets, designates an agent for service of process, holds a license, or is
17 incorporated there. *Bancroft & Masters, Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082, 1086
18 (9th Cir. 2000).

19 **2. Specific Jurisdiction**

20 The Ninth Circuit has established a three-pronged test for analyzing a claim of
21 specific jurisdiction: (1) the non-resident must purposefully direct his activities or
22 consummate some transaction with the forum or resident thereof, or perform some act by
23 which he purposefully avails himself of the privilege of conducting activities in the
24 forum, thereby invoking the benefits and protections of its laws; (2) the claim must be one
25 which arises out of or relates to the defendant's forum-related activities; and (3) the
26 exercise of jurisdiction must comport with fair play and substantial justice, i.e. it must be
27 reasonable. *Doe*, 248 F.3d at 923.


1 The Court finds from the record before it that Ideal Services, Inc. has made a prima
2 facia showing of continuous and systematic contacts by Kermit Mills with the State of
3 Washington. Kermit Mills maintained a personal bank account in Washington State (Dkt.
4 70-4 at 2); Domestic Construction, LLC maintained a business office in Washington State
5 (*Id.*); Kermit Mills listed his place of employment as Ideal Services, Inc., a Washington
6 State corporation, and was paid by Ideal Services, Inc. throughout 2005 (Dkt. 78 at 17-
7 21, 23); Kermit Mills held Domestic Construction, LLC as a joint venture with Ideal
8 Services, Inc. (*Id.* at 29-30); and Kermit Mills conducted the every-day business of
9 Domestic Construction, LLC in conjunction with Ideal Services, Inc. as evidenced by the
10 numerous email communications sent by Kermit Mills (*Id.* at 11, 26, 28; Dkt. 78-2 at 2-
11 10, 19-22, 27). The Court further finds that Ideal Services, Inc. has made a prima facia
12 showing of specific personal jurisdiction. Kermit Mills did purposely avail himself with
13 this forum through his employment with Ideal Services, Inc., through Domestic
14 Construction, LLC's partnership with Ideal Services, Inc., and through the alleged
15 misappropriation of payments directed toward Ideal Services, Inc., a Washington State
16 corporation. The Court further finds that the instant claim arises out of or relates to these
17 connections with Washington State and that it is reasonable for this Court to exercise
18 jurisdiction over Kermit Mills. Therefore, Ideal Services, Inc. has made a prima facie
19 showing of personal jurisdiction and as a result, Kermit Mills' motion should be denied.

20 ORDER

21 Therefore, it is **ORDERED** that Fourth-Party Defendant Kermit Mills' Motion to
22 Dismiss for Lack of Personal Jurisdiction (Dkt. 70) is hereby **DENIED**, Third-Party
23 Defendant/Fourth-Party Plaintiff Ideal Services, Inc.'s Motion to Strike (Dkt. 77) is
24 hereby **DENIED**, and Third-Party Defendant/Fourth-Party Plaintiff Ideal Services, Inc.'s
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1 Motion for Leave to Amend Fourth-Party Complaint Against Kermit Mills (Dkt. 79) is
2 hereby **GRANTED**.

3 DATED this 9th day of May, 2008.

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7 BENJAMIN H. SETTLE
8 United States District Judge
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